



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R02-OAR-2013-0592; FRL- 9906-06-Region 2]

Approval and Promulgation of Air Quality Implementation Plans; New York State; Redesignation of Areas for 1997 Annual and 2006 24-hour Fine Particulate Matter and Approval of the Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a redesignation request and State Implementation Plan (SIP) revision submitted by the New York State Department of Environmental Conservation (NYSDEC). NYSDEC is requesting that EPA redesignate ten counties in the New York State portion of the New York-N.J.-Long Island, NY-NJ-CT nonattainment area from nonattainment to attainment for the 1997 annual and the 2006 24-hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). Included with its redesignation request, New York submitted a State Implementation Plan (SIP) revision containing a maintenance plan that provides for continued compliance of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. The maintenance plan includes the 2007 attainment year emissions inventory that EPA is proposing to approve in this rulemaking in accordance with the requirements of the Clean Air Act (CAA). EPA had previously determined that the New York portion of the New York-N.J.-Long Island, NY-NJ-CT nonattainment area has attained the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. Additionally, EPA is proposing to approve the 2009, 2017, and 2025 motor vehicle emissions budgets for PM_{2.5} and Nitrogen Oxides (NO_x).

DATES: Comments must be received on or before [Insert 30 days from date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R02-OAR-2013-0592 by one of the following methods:

1. www.regulations.gov : Follow the on-line instructions for submitting comments.
2. E-mail: Ruvo.Richard@epa.gov
3. Fax: 212-637-3901
4. Mail: Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.
5. Hand Delivery or Courier. Deliver your comments to: Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official business hours is Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R02-OAR-2013-0592. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI)

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Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests that if at all possible, you contact the contact listed in the FOR FURTHER INFORMATION CONTACT

section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Raymond Forde (forde.raymond@epa.gov) concerning emission inventories and Gavin Lau (lau.gavin@epa.gov) concerning other portions of the SIP revision, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. What are the actions EPA is proposing to take?

On June 27, 2013, the NYSDEC, submitted a package to EPA which included 1) a request to redesignate the New York portion of the New York-New Jersey-Long Island, NY-NJ-CT nonattainment area (hereafter referred to as the New York PM_{2.5} nonattainment area or NYNAA), from nonattainment to attainment for the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS and 2) a maintenance plan for the NYNAA as a SIP revision to ensure continued attainment through 2025. In a supplemental submission to EPA dated September 18, 2013, NYSDEC submitted additional information clarifying portions of the redesignation request and maintenance plan.

EPA is proposing to take several actions pursuant to the redesignation of the NYNAA for the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS. EPA is proposing to find that the NYNAA meets the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve New York's request to change the legal definition of the NYNAA from nonattainment to attainment. EPA has previously taken two separate actions redesignating the New Jersey and the Connecticut portion of the New York-New Jersey-Long Island, NY-NJ-CT nonattainment area (or NY-NJ-CT nonattainment area) for the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS (See 78 FR 54396, September 4, 2013 and 78 FR 58467, October 24, 2013).

EPA is also proposing to approve the maintenance plan for the NYNAA as a revision to the New York SIP. Such approval is one of the criteria in the CAA for redesignating an area to

attainment. The maintenance plan is designed to ensure continued attainment in the NYNAA for the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS for 10 years after redesignation. The maintenance plan includes the 2007 attainment year, 2017 interim year, and 2025 end year projection emission inventories. EPA is also proposing to approve the 2009, 2017, and 2025 motor vehicle emissions budgets for PM_{2.5} and NO_x.

In this proposed redesignation, EPA takes into account the D.C. Circuit January 4, 2013 decision remanding to EPA the “Final Clean Air Fine Particle Implementation Rule” (72 FR 20586, April 25, 2007) and the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})” final rule (73 FR 28321, May 16, 2008), *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013).

EPA’s analysis for these proposed actions is discussed in Sections VI, VII, and VIII of today’s proposed rulemaking action.

II. What is the background for EPA’s proposed actions?

A. General

The first air quality standards for PM_{2.5} were promulgated on July 18, 1997, at 62 FR 38652. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (µg/m³), based on a three-year average of annual mean PM_{2.5} concentrations. In the same rulemaking, EPA promulgated a 24-hour standard of 65 µg/m³, based on a three-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006, at 71 FR 61144, EPA retained the annual

average standard at 15 µg/m³ but revised the 24-hour standard to 35 µg/m³, based again on the three-year average of the 98th percentile of 24-hour concentrations.

On January 5, 2005, at 70 FR 944, as supplemented on April 14, 2005, at 70 FR 19844, EPA designated the NY-NJ-CT nonattainment area as nonattainment for the 1997 PM_{2.5} air quality standards. In that action, EPA defined the nonattainment area to include the following ten New York counties: Bronx, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk, and Westchester.

On July 7, 2009, the D.C. Circuit, *Catawba County, North Carolina, et al., v. EPA*, 571 F.3d 20, (D.C. Cir. 2009), ruled on consolidated petitions for review of area designations for the 1997 PM_{2.5} NAAQS filed by several states, counties, and industrial entities. The D.C. Circuit denied petitions for review in all respects except for the designation of Rockland County, which was remanded to EPA¹.

On November 13, 2009, at 74 FR 58688, EPA promulgated designations for the 24-hour standard set in 2006, designating the NY-NJ-CT nonattainment area as nonattainment for the 2006 24-hour PM_{2.5} NAAQS. The nonattainment area boundaries for NY-NJ-CT nonattainment area for the 2006 PM_{2.5} NAAQS were identical to the boundaries for the 1997 PM_{2.5} NAAQS, including all tens counties that were previously designated nonattainment in 2005. The November 13, 2009 action also clarified that the NY-NJ-CT nonattainment area was classified as

¹The court found the Rockland County nonattainment designation was inconsistent with the approach EPA used in other designations.

unclassifiable/attainment for the 1997 24-hour PM_{2.5} NAAQS. EPA did not promulgate designations for the annual average NAAQS promulgated in 2006 since that NAAQS was essentially identical to the 1997 annual PM_{2.5} NAAQS.

This proposed action addresses the designation for the annual NAAQS promulgated in 1997 and the 24-hour NAAQS promulgated in 2006 for the NYNAA and also addresses the D.C. Circuit's, *Catawba County*, 571 F.3d 20, remand of the Rockland County designation.

In the final rulemaking action dated November 15, 2010 (75 FR 69589), EPA determined that the entire NY-NJ-CT nonattainment area had attained the 1997 annual PM_{2.5} NAAQS, based upon quality assured, quality controlled, and certified ambient air monitoring data for the period of 2007-2009.

On December 31, 2012 (77 FR 76867), EPA finalized the determination that the entire NY-NJ-CT nonattainment area had attained the 2006 24-hour PM_{2.5} NAAQS, based upon quality assured, quality controlled, and certified ambient air monitoring data that showed that the area had monitored attainment of the 2006 24-hour PM_{2.5} NAAQS for the 2007-2009 and 2008-2010 monitoring periods.

The 3-year ambient air quality data for the last four 3-year monitoring periods (2007-2009, 2008-2010, 2009-2011, and 2010-2012) indicated no violations for the 1997 annual PM_{2.5} and 2006 PM_{2.5} NAAQS. As a result, on June 12, 2013 New York requested redesignation of the NYNAA

to attainment for the 1997 annual PM_{2.5} and 2006 24-hour PM_{2.5} NAAQS. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements under 107(d)(3)(E).

B. Clean Air Interstate Rule (CAIR) and Cross State Air Pollution Rule (CSAPR or the Transport Rule)

On May 12, 2005, EPA published CAIR, which requires significant reductions in emissions of SO₂ and NO_x from electric generating units (EGUs) to limit the interstate transport of these pollutants and the ozone and PM_{2.5} they form in the atmosphere. *See* 70 FR 25162. The D.C. Circuit initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). In response to the D.C. Circuit's decision, EPA issued the Transport Rule, also known as CSAPR, to address interstate transport of NO_x and SO₂ in the eastern United States. *See* 76 FR 48208 (August 8, 2011).

On December 30, 2011, the D.C. Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the Court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer City Generation, L.P. v. EPA* (No. 11-1302 and consolidated cases). The Court also indicated that EPA was expected to continue to administer CAIR in the

interim until judicial review of CSAPR was completed.

On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR “pending the promulgation of a valid replacement.” *EME Homer City*, 696 F.3d at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013.

On March 29, 2013, the U.S. Solicitor General petitioned the Supreme Court to review the D.C. Circuit Court’s decision on CSAPR. On June 24, 2013, the Supreme Court granted the petition to review the decision. The Supreme Court’s decision to review the case does not alter the current status of CAIR or CSAPR.

New York’s submittal and EPA modeling demonstrate that the attainment of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS will be maintained with or without the implementation of CAIR or CSAPR. To the extent that attainment is due to emission reductions associated with CAIR, EPA is proposing to determine that those reductions are sufficiently permanent and enforceable for purposes of CAA sections 107(d)(3)(E)(iii) and 175A.

As directed by the D.C. Circuit, CAIR remains in place and enforceable until EPA promulgates a valid replacement rule to substitute for CAIR.

New York’s SIP revision lists CAIR among the Federal trading programs that have resulted in

permanent and enforceable emissions reductions that have led to attainment of the PM_{2.5} NAAQS. New York rules, 6 NYCRR Parts 243, 244, and 245, effective on October 19, 2007, implement the CAIR trading program in New York. CAIR was, thus, in place and achieving emission reductions when the NY-NJ-CT nonattainment area began monitoring attainment of the 1997 annual and the 2006 24-hour PM_{2.5} standards during the 2007–2009 period. The quality assured, certified monitoring data continues to show the area in attainment with the 1997 and 2006 PM_{2.5} standards through 2012, and through 2013 with preliminary data.

In addition, air quality modeling analysis conducted during the CSAPR rulemaking process also demonstrated that the counties in the NY-NJ-CT nonattainment area will have PM_{2.5} levels below the 1997 annual and 2006 24-hour PM_{2.5} NAAQS in both 2012 and 2014 without taking into account emissions reductions from CAIR or CSAPR. *See* “Air Quality Modeling Final Rule Technical Support Document”², App. B, B-18, B-19. This modeling is also available in the docket for this proposed redesignation.

In sum, neither the current status of CAIR nor the current status of CSAPR affects any of the criteria for proposed approval of this redesignation request for the NYNAA.

III. What are the criteria for redesignation?

Under the CAA, designations can be revised if sufficient data is available to warrant such revisions. Section 107(d)(3)(E) of the CAA identifies five specific requirements that an area

² The document is available at <http://www.epa.gov/crossstaterule/pdfs/AQModeling.pdf>

must meet in order to be redesignated from nonattainment to attainment:

1. The area must have attained the applicable NAAQS.
2. The area must meet all applicable requirements under section 110 and part D of the CAA.
3. The area must have a fully approved SIP under section 110 (k) of the CAA.
4. The air quality improvement must be permanent and enforceable.
5. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA.

EPA has provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (April 16, 1992, 57 FR 13498, and supplemented on April 28, 1992, 57 FR 18070) and has provided further guidance on processing redesignation requests in the following documents:

1. “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the “Calcagni Memorandum”);
2. “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,” Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
3. “Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation

to Attainment,’’ Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

4. “Implementation Guidance for the 2006 24-hour PM_{2.5} NAAQS,’’ Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, March 2, 2012.

IV. What is the effect of EPA’s proposed actions?

Final approval of the redesignation request would change the official designation of the NYNAA to attainment for the 1997 annual PM_{2.5} and 2006 24-hour PM_{2.5} NAAQS, found at 40 CFR part 81. It would incorporate into the New York SIP a maintenance plan ensuring continued attainment of the 1997 annual PM_{2.5} and 2006 24-hour PM_{2.5} NAAQS until 2025. Approval of the 2007 base year emissions inventory, which is part of the maintenance plan, will satisfy the inventory requirements under section 172(c)(3) of the CAA. EPA is also proposing to approve the 2009, 2017, and 2025 motor vehicle emissions budgets for PM_{2.5} and NO_x.

V. What is the effect of the January 4, 2013 D.C. Circuit Decision Regarding PM_{2.5}

Implementation under Subpart 4?

A. Background

As discussed above, on January 4, 2013, in *Natural Resources Defense Council v. EPA* (hereafter referred to as *NRDC v. EPA*), the D.C. Circuit remanded to EPA the “Final Clean Air Fine Particle Implementation Rule” (72 FR 20586, April 25, 2007) and the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})”

final rule (73 FR 28321, May 16, 2008) (collectively, “1997 PM_{2.5} Implementation Rule”). 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 PM_{2.5} NAAQS pursuant to the general implementation provisions of subpart 1 of part D of Title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4 of Part D of Title I. Although the Court’s ruling did not directly address the 2006 PM_{2.5} standard, EPA is taking into account the Court’s position on subpart 4 and the 1997 PM_{2.5} standard in evaluating redesignations for the 2006 standard.

B. Subpart 4 Requirements and New York’s Redesignation Request

In this portion of the proposed redesignation, EPA addresses the effect of the Court’s January 4, 2013 ruling on the proposed redesignation. As explained below, EPA is proposing to determine that the Court’s January 4, 2013 decision does not prevent EPA from redesignating the NYNAA to attainment for the 1997 and 2006 PM_{2.5} NAAQS. Even in light of the Court’s decision, redesignation for this area is appropriate under the CAA and EPA’s longstanding interpretations of the CAA’s provisions regarding redesignation. EPA demonstrates that even if the subpart 4 requirements were applied to the New York redesignation request and disregards the provisions of its 1997 PM_{2.5} implementation rule recently remanded by the Court, New York’s request for redesignation of this area still qualifies for approval. EPA’s discussion takes into account the effect of the Court’s ruling on the area’s maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the NYNAA, EPA notes that subpart 4 incorporates components of subpart 1 of

part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* Section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for PM₁₀³ nonattainment areas, and under the Court’s January 4, 2013 decision in *NRDC v. EPA*, these same statutory requirements also apply for PM_{2.5} nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See*, “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 57 FR 13498 (April 16, 1992) (the “General Preamble”). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent “subsumed by, or integrally related to, the more specific PM-10 requirements.” 57 FR 13538 (April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, reasonably available control measures (RACM), reasonable further progress (RFP), emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify any additional requirements which would apply under subpart 4, we are considering the NY-NJ-CT nonattainment area to be a “moderate” PM_{2.5} nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as “moderate” nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a “serious” nonattainment area. Accordingly, EPA believes that

³ PM₁₀ refers to particulates nominally 10 micrometers in diameter or smaller.

it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) an approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM₁₀, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1. In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a prevention of significant deterioration (PSD) program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." *See also* rulemakings for Detroit, Michigan (60 FR 12467-12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469-20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834-31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,⁴ when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the PM_{2.5} standard is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that:

The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

“General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990”; (57 FR 13498, 13564, April 16, 1992).

The General Preamble also explained that

[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

Id.

⁴i.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

EPA similarly stated in its 1992 Calcagni memorandum that, “The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.”

It is evident that even if we were to consider the Court’s January 4, 2013 decision in *NRDC v. EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively and thus are now past due, those requirements do not apply to an area that is attaining the 1997 and 2006 PM_{2.5} standards, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA’s authority to interpret “applicable requirements” in the redesignation context. *See Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA’s prior “Clean Data Policy” rulemakings for the PM₁₀ NAAQS, also governed by the requirements of subpart 4, explain EPA’s reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* “Determination of Attainment for Coso Junction Nonattainment Area,” (75 FR 27944, May 19, 2010). *See also* Coso Junction proposed PM₁₀ redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San

Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47 October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

Elsewhere in this action, EPA proposes to determine that the NYNAA continues to attain the 1997 and 2006 PM_{2.5} standards. Under its longstanding interpretation, EPA is proposing to determine here that the area meets the attainment-related plan requirements of subparts 1 and 4.

Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)(1) and section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating the redesignation request.

VI. What is EPA’s analysis of New York’s redesignation request?

In an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on June 27, 2013, NYSDEC submitted a redesignation request and maintenance plan for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS for NY-NJ-CT nonattainment areas. On September 18, 2013, NYSDEC submitted additional materials to supplement the redesignation request.

The following is a description of how the state has fulfilled each of the CAA redesignation requirements.

A. Attainment

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). In this action, EPA is proposing to determine that the NY-NJ-CT nonattainment area is continuing to attain the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS.

1997 annual PM_{2.5} NAAQS

An area may be considered to be attaining the 1997 annual PM_{2.5} NAAQS if it meets the NAAQS as determined in accordance with 40 CFR 50.7 and Appendix N of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the three-year average of annual means must be less than or equal to 15 µg/m³ at all relevant monitoring sites in the subject area. The relevant data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The monitors meet data completeness requirements when “at least 75 percent of the scheduled sampling days for each quarter have valid data”. The use of less than complete data is subject to the approval of EPA, which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining whether to use such data.

As noted in Section II.A. above, EPA has finalized the determination that the NY-NJ-CT nonattainment area had attained the 1997 annual PM_{2.5} NAAQS. (75 FR 69589, November 15,

2010). NYSDEC submitted ambient air monitoring data showing PM_{2.5} concentrations attaining the annual PM_{2.5} NAAQS for the 2007-2009 and 2008-2010 time periods. EPA has also reviewed more recent quality-assured data for the NY-NJ-CT nonattainment area and found that the NYNAA continued to attain the 1997 annual PM_{2.5} NAAQS through 2012⁵.

Table 1, below, shows the four most recent design values by county (i.e. 3-year average) of annual mean PM_{2.5} concentrations) for the 2007-2009, 2008-2010, 2009-2011, and 2010-2012 time periods for the 1997 annual PM_{2.5} NAAQS for the NY-NJ-CT PM_{2.5} nonattainment area monitors.

Table 1—Design Value Concentrations for the NY-NJ-CT 1997 Annual PM_{2.5} NAAQS Nonattainment Area (µg/m³)
[The 1997 annual PM_{2.5} NAAQS is 15.0 µg/m³]

County	AQS Monitor ID	3-Year design values			
		2007-2009	2008-2010	2009-2011	2010-2012

⁵ Preliminary monitoring data for the first three quarters of 2013 also indicates continued attainment

NEW YORK					
Bronx	36-005-0080/110	13.9	12.5	11.9	9.8
Kings	36-047-0122	12.2	10.8	10.3	9.9
Nassau	36-059-0008	10.3	9.5	8.9	INC
New York	36-061-0128/0134	12.1	12.1	11.7	11.8
Orange	36-071-0002	9.3	8.5	8.2	8.1
Queens	36-081-0124	10.6	10.0	9.4	9.1
Richmond	36-085-0055	11.6	10.5	9.8	9.7
Rockland	NM	NM	NM	NM	NM
Suffolk	36-103-0002	9.7	8.9	8.4	8.4
Westchester	36-119-1002	10.6	9.6	9.1	INC
NEW JERSEY					
Bergen	34-003-0003	11.3	9.8	9.2	9.2
Essex	34-0013-003	INC	INC	INC	9.5
Hudson	34-017-2002	13.1	11.6	11.1	11.1
Mercer	34-021-0008	10.8	10.0	9.7	9.5
Middlesex	34-023-0006	10.4	8.8	7.9	8.0
Monmouth	NM	NM	NM	NM	NM
Morris	34-027-0004	9.6	8.7	8.5	8.4
Passaic	34-031-0005	11.3	9.8	9.3	9.3
Somerset	NM	NM	NM	NM	NM
Union	34-039-0006/2003	11.6	10.3	9.6	9.7
CONNECTICUT					
Fairfield	09-001-0010	11.3	10.0	9.4	9.4
New Haven	09-009-1123	11.4	10.3	9.6	9.4

INC- Counties listed as INC did not meet 75 percent data completeness requirement for the relevant time period.

NM- No monitor located in county

Based on air monitoring data through 2012, EPA concludes that NY-NJ-CT nonattainment area is continuing to attain the 1997 annual $PM_{2.5}$ NAAQS. Therefore, EPA proposes that the statutory criterion for attainment of the 1997 annual $PM_{2.5}$ NAAQS (40 CFR 50.7 and Appendix N of part 50) has been met.

2006 24-hour $PM_{2.5}$ NAAQS

An area may be considered to be attaining the 2006 24-hour $PM_{2.5}$ NAAQS if it meets the NAAQS as determined in accordance with 40 CFR 50.13 and Appendix N of part 50, based on

three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 35 µg/m³ at all relevant monitoring sites in the subject area over a 3-year period. The relevant data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's AQS. The monitors meet data completeness requirements when "at least 75 percent of the scheduled sampling days for each quarter have valid data." The use of less than complete data is subject to the approval of EPA, which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining whether to use such data.

EPA previously finalized the determination that the NY-NJ-CT nonattainment area had attained the 2006 24-hour PM_{2.5} NAAQS, as noted in Section II.A. (77 FR 76867, December 31, 2012). The ambient air monitoring data submitted by New York shows PM_{2.5} concentrations attaining the 24-hour PM_{2.5} NAAQS for 2007-2009 and 2008-2010 time periods. EPA has also reviewed more recent quality-assured data for the NY-NJ-CT nonattainment area and found that the NYNAA continued to attain the 2006 24-hour PM_{2.5} NAAQS through 2012⁶.

Table 2, below, shows the design value by county for the 98th percentile 24-hour PM_{2.5} concentrations for the 2007-2009, 2008-2010, 2009-2011, and 2010-2012 time periods for the 2006 24-hour PM_{2.5} NAAQS for the NY-NJ-CT PM_{2.5} nonattainment area monitors.

⁶ Preliminary monitoring data for the three quarters of 2013 also indicates continued attainment

**Table 2 —Design Value Concentrations for the NY-NJ-CT 2006 24-hour PM_{2.5} NAAQS
Nonattainment Area (µg/m³)**

[The 24-hour PM_{2.5} NAAQS is 35 µg/m³]

County	AQS Monitor ID	3-Year design values			
		2007-2009	2008-2010	2009-2011	2010-2012
NEW YORK					
Bronx	36-005-0080/133	33	29	28	24
Kings	36-047-0122	30	27	25	24
Nassau	36-059-0008	28	25	23	INC
New York	36-061-0134/0079	32	29	28	26
Orange	36-071-0002	26	24	23	23
Queens	36-081-0124	30	28	26	24
Richmond	36-085-0055	29	26	24	24
Rockland	NM	NM	NM	NM	NM
Suffolk	36-103-0002	26	25	23	22
Westchester	36-119-1002	29	28	25	INC
NEW JERSEY					
	34-003-0003	31	28	25	23
Bergen	34-013-0003	INC	INC	INC	23
Essex	34-017-1003	32	29	28	26
Hudson	34-021-0008	29	27	26	25
Mercer	34-023-0006	27	23	20	19
Middlesex	NM	NM	NM	NM	NM
Monmouth	34-027-3001	26	23	23	21
Morris	34-031-0005	30	26	25	24
Passaic	NM	NM	NM	NM	NM
Somerset	34-039-0006	31	27	24	24
Union					
CONNECTICUT					
Fairfield	09-001-0010/1123	31	28	26	24
New Haven	09-009-0027	31	29	28	25

NM- No monitor located in county.

INC- All counties listed as INC did not meet 75 percent data completeness requirement for the relevant time period.

Based on air monitoring data through 2012, EPA concludes that the NY-NJ-CT nonattainment area is continuing to attain the 2006 24-hour PM_{2.5} NAAQS. Therefore, EPA proposes that the statutory criterion for attainment of the 2006 24-hour PM_{2.5} NAAQS (40 CFR 50.13 and Appendix N of part 50) has been met.

B. The Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

EPA has determined that the NYNAA has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that, upon final approval of the 2007 attainment year emissions inventory, as discussed below in this proposed rulemaking, it will have met all applicable SIP requirements under part D of Title I of the CAA, in accordance with CAA section 107(d)(3)(E)(v). In addition, EPA is proposing to find that all applicable requirements of the New York SIP for purposes of redesignation have been approved in accordance with CAA section 107(d)(3)(E)(ii).

1. Section 110 SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in CAA section 110(a)(2) include, but are not limited to the following:

- Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;

- Implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants in accordance with the NO_x SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_x SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and CAIR, May 12, 2005 (70 FR 25162). However, the CAA section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other CAA section 110(a)(2) elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after it is redesignated. EPA concludes that the CAA section 110(a)(2) and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request, and that CAA section 110(a)(2) elements not linked in the area's nonattainment status are not applicable for purposes of redesignation. This approach is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. *See Reading, Pennsylvania*, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); *Cleveland-Akron-Lorain, Ohio* final rulemaking (61 FR 20458, May 7, 1996); and *Tampa, Florida* final rulemaking (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the *Cincinnati, Ohio* redesignation (65 FR 37890, June 19, 2000) and in the *Pittsburgh, Pennsylvania* redesignation (66 FR 53099, October 19, 2001).

New York submitted Section 110 "infrastructure SIPs" required under CAA section 110(a)(2) to EPA for the 1997 PM_{2.5} NAAQS (dated October 2, 2008) and 2006 PM_{2.5} NAAQS (dated March 15, 2010). EPA has reviewed the New York SIP and has concluded that it meets the general SIP requirements under section 110(a)(2) of the CAA to the extent they are applicable for purposes for redesignating the NYNAA to attainment for the 1997 annual PM_{2.5} NAAQS and the 2006 24-hour PM_{2.5} NAAQS. EPA took final action approving New York's infrastructure SIP submittals on June 20, 2013 (78 FR 37122). The requirements under section 110(a)(2) of the

CAA are, however, statewide requirements that are not linked to the PM_{2.5} nonattainment status of the NYNAA. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of New York's PM_{2.5} redesignation request.

2. Title I, Part D Nonattainment Requirements

Subpart 1 of part D of Title I of the CAA sets forth the basic nonattainment requirements applicable to all nonattainment areas. All areas that were designated nonattainment for the 1997 and 2006 PM_{2.5} NAAQS were designated under this subpart of the CAA, and the requirements applicable to them are contained in sections 172 and 176. EPA's analysis of the particulate-matter-specific provisions of Subpart 4 of part D of Title I as a result of the January 4, 2013 D.C. Circuit decision is discussed earlier in this notice.

Section 172 Requirements

Under CAA section 172, states with nonattainment areas must submit plans providing for timely attainment and meet a variety of other requirements. As mentioned, EPA has previously finalized determinations that the NY-NJ-CT nonattainment areas had attained the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS.

New York's obligation to submit an attainment demonstration, RACT/RACM, RFP, contingency measures, and other planning SIPs related to the attainment of the PM_{2.5} NAAQS has been suspended due to EPA's determination that the NY-NJ-CT nonattainment area has attained the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. New York submitted a SIP revision (PM_{2.5}

attainment plan) for attaining the 1997 annual PM_{2.5} NAAQS on October 27, 2009. The requirements to submit PM_{2.5} attainment plans were suspended as a result of the determination of attainment and it was not necessary for New York to submit a plan for the 2006 24-hour PM_{2.5} NAAQS. The only remaining requirement to be considered after the determination of attainment of the PM_{2.5} NAAQS is the emission inventory required under CAA section 172(c)(3).

The General Preamble for Implementation of Title I also discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining the standard. *See* General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Because attainment has been reached for the NY-NJ-CT nonattainment area, no additional measures are needed to provide for attainment. CAA section 172(c)(1) requirements for an attainment demonstration, and RACT/RACM are no longer considered to be applicable requirements for as long as the area continues to attain the standard until redesignation. *See* 40 CFR 51.1004(c). The RFP requirement under CAA section 172(c)(2) are similarly not relevant for purposes of redesignation.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. As part of the maintenance plan submitted by New York on June 27, 2013, the State has submitted an attainment year inventory that meets this requirement. For

purposes of the PM_{2.5} NAAQS, the emissions inventory should address not only direct emissions of PM_{2.5}, but also emissions of all precursors with the potential to participate in PM_{2.5} formation, i.e., SO₂, NO_x, VOC and ammonia (NH₃). The 2007 attainment year emissions inventory submitted by New York in the June 27, 2013 submission addressed PM_{2.5}, SO₂, NO_x, VOC and NH₃ emissions.

The emissions cover the general source categories of point sources, area sources, onroad sources and nonroad sources. The proposed approval of the 2007 attainment year emissions inventory in this rulemaking action will, when finalized, meet the requirements of CAA section 172(c)(3).

The 2007 emissions inventory was prepared by NYSDEC and is presented in Table 5 located in Section VII.E.2(a), Attainment Emissions Inventory, of this action. Table 5 shows the 2007 base year PM_{2.5}, NO_x, SO₂, VOC and NH₃ annual emission inventories for the NYNAA. EPA's detailed evaluation of the base year inventories for all pollutants is also addressed in Section VII.E.2.(a), Attainment Emissions Inventory, of this action. A copy of the Technical Support Document⁷ submitted by New York is included in the TSD of the New York SIP submission.

Section 172(c)(4) of the CAA requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and CAA section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary

⁷ AMEC and SRA for MARAMA Technical Support Document for the Development of the 2007 Emission Inventory for PM Nonattainment Counties in the MANE-VU Region Version 3.3. AMEC Environment and Infrastructure and SRA International, Inc for Mid-Atlantic Regional Air Management Association (MARAMA), January 23, 2012.

sources anywhere in the nonattainment area. EPA has determined that, since the PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment New Source Review (NSR) program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in the memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994 entitled, “Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.” New York’s approved PM_{2.5} PSD program will become effective in the NYNAA upon redesignation to attainment.

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached in the NY-NJ-CT nonattainment area, no additional control measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes the New York SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

CAA section 172(c)(9) provides that SIPs in nonattainment areas “shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any

such case without further action by the State or [EPA].” This contingency measure requirement is inextricably tied to the reasonable further progress and attainment demonstration requirements. Because attainment has been reached for the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS, contingency measures are not applicable for redesignation.

Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine transportation conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act. The requirement to determine general conformity applies to all other federally supported or funded projects. State transportation conformity SIP revisions must be consistent with Federal transportation conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA⁸.

EPA interprets the conformity⁹ SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. *See Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748

⁸ Guidance on transportation conformity SIPs can be found at:
<http://www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf>

⁹ CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from MVEBs that are established in control strategy SIPs and maintenance plans.

(December 7, 1995) (redesignation of Tampa, Florida).

C. Fully Approved SIP Under Section 110(k) of the CAA

Section 107(d)(3)(E)(ii) of the CAA requires that for an area to be redesignated the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

Upon final approval of New York's 2007 attainment year emissions inventory, EPA will have fully approved the SIPs for the NYNAA for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS under section 110(k) for all requirements applicable for purposes of redesignation.

EPA is proposing to approve the 2007 attainment year emissions inventory (submitted as part of its maintenance plan) for the NYNAA as meeting the requirement of section 172(c)(3) of the CAA for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. Therefore, New York will have satisfied all applicable requirements under part D of Title I of the CAA.

D. The Air Quality Improvement Must be Permanent and Enforceable

The improvement in air quality must be due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal air pollution control regulations and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)).

EPA proposes to determine that the air quality improvement in the NYNAA is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, federal

measures, and other state adopted measures.

As indicated in Section VI.A., the NY-NJ-CT nonattainment area came into attainment with the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS beginning with the 2007-2009 time period. The area has remained in attainment and the air quality has improved. As shown in the State's submittal¹⁰, the PM_{2.5} maximum and average concentrations for NYNAA monitors shows a downward trend over the past decade. Additionally the State's submittal¹¹ demonstrates that New York's maximum design values in the NY-NJ-CT nonattainment area have not exceeded the annual NAAQS since 2007, New Jersey's maximum design values have not exceeded the annual NAAQS since 2006, and Connecticut's maximum design value has not exceeded the annual NAAQS since 2003. For the 2006 24-hour PM_{2.5} NAAQS, New York's and New Jersey's maximum design values have not exceeded the NAAQS since 2008, and Connecticut's maximum design value has not exceeded the NAAQS since 2007.

As demonstrated in the state's maintenance plan, the improvement in air quality can be attributable to the Federal and SIP approved State control measures that provide for PM_{2.5}, and PM_{2.5} precursors emission reductions from 2002 through PM_{2.5} NAAQS attainment beginning in 2007-2009 (see Table 3). The tables also indicate the maintenance plan measures with quantifiable emission reductions that New York is relying on to demonstrate maintenance.

Table 3 - List of Post-2002 New York Control Measures for PM_{2.5} and Precursors

¹⁰ See New York' redesignation submission, Figures 5 thru 8

¹¹ See New York' redesignation submission, Table 6

Name of Control Measure	Type of measure	Targeted Pollutants					Maintenance Plan Measure	State Citation
		NOx	PM _{2.5}	SO ₂	VO C	NH ₃		
Architectural and Industrial Maintenance Coatings	State				X			6 NYCRR 205
Reasonably Available Control Technology for Major Facilities	State	X			X			6 NYCRR 212.10
Solvent Metal Cleaning Process	State				X			6 NYCRR 226
Reasonably Available Control Technology for Major Facilities of Oxides of Nitrogen	State	X					X	6 NYCRR 227-2
Portland Cement Plants	State	X						6 NYCRR 220-1
Glass Plants	State	X						6 NYCRR 220-2
Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers	State				X		X	6 NYCRR 228
Graphic Arts	State				X			6 NYCRR 234
Portable Fuel Container Spillage Control	State				X		X	6 NYCRR 239
New York I/M Program	State	X			X		X	6 NYCRR 217
Residential Woodstove NSPS	Federal rule	X	X		X		X	

CAIR	Federal rule	X		X				
Federal Tier 2 Gasoline Sulfur Program	Federal rule			X			X	
Federal Clean Diesel Program	Federal rule	X	X	X	X		X	
Control of Emissions from Nonroad Large Sparking Engines, and Recreational Engines (Marine and Land-based)	Federal rule	X	X		X		X	
Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel	Federal rule	X	X	X			X	

Table 4 shows Federal and State post 2007-2009 maintenance plan measures with creditable emissions reductions, including measures that have been adopted, but not yet implemented, that New York is relying on to demonstrate maintenance. New York's submittal also included additional measures to provide additional assurance that New York's air quality will continue to comply with the 1997 annual and 2006 24-hour PM_{2.5} NAAQS.

Table 4–List of 2007-2009 New York Maintenance Plan Control Measures for PM_{2.5} and Precursors

Name of Control Measure	Type of Measure	Targeted Pollutants					Maintenance Plan Measure	State Citation
		NO _x	PM _{2.5}	SO ₂	VOC	NH ₃		
EGU- Oil	State	X		X	X		X	6 NYCRR Part 227

EGU- Gas	State	X			X		X	6 NYCRR Part 227 and 228
Low Sulfur Distillate and Residual Fuel Strategies	State		X	X			X	6 NYCRR Parts 225
Asphalt	State				X		X	6 NYCRR Part 241
Consumer Products	State				X		X	6 NYCRR Parts 231
Oil Combustion Sources	State				X		X	6 NYCRR Parts 227
Natural Gas Combustion	State				X		X	6 NYCRR Parts 227
New York Combustion Regulation	State	X	X	X			X	6 NYCRR Parts 227
New York Low Emission Vehicle Program (LEV II)	State	X	X		X		X	6 NYCRR Part 218
Heavy Duty Highway Rule-Vehicle Standards and Diesel Fuel Sulfur Co	Federal Rule	X	X	X	X		X	
Nonroad Diesel Engines	Federal Rule	X	X		X		X	
Locomotive Engines and Marine Compression-Ignition Engines Less than 30 Liters per Cylinder	Federal Rule	X	X		X		X	

Phase 2 Standards for Non-Road Spark Ignition Non-handheld Engines at or below 19 kW	Federal Rule	X			X		X	
Phase 2 Standards for Small Spark Ignition Handheld Engines at or below 19 kW	Federal Rule	X			X		X	
Recreational Vehicles (includes snowmobiles, off-highway motorcycles, and all-terrain vehicles)	Federal Rule	X			X		X	
Gasoline Boats and personal watercraft, outboard engines	Federal Rule	X	X		X		X	

Based on the information presented above, New York has adequately demonstrated that the decline in PM_{2.5} concentrations was due to permanent and enforceable control measures. EPA proposes to find that the combination of existing EPA-approved SIP and Federal measures contribute to the permanence and enforceability of reduction in ambient PM_{2.5} levels that have allowed New York to attain the 1997 PM_{2.5} and 2006 24-hour PM_{2.5} NAAQS.

E. The Area Must have a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the NYNAA to attainment for the 1997 annual PM_{2.5} NAAQS and the 2006 24-hour PM_{2.5} NAAQS, New York

submitted a SIP revision to provide for maintenance for at least 10 years after the effective date of redesignation to attainment. EPA believes this maintenance plan meets the requirements for approval under section 175A of the CAA.

1. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future PM_{2.5} violations. The Calcagni Memorandum, dated September 4, 1992, provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: (1) An attainment emissions inventory; (2) a maintenance demonstration showing maintenance for 10 years; (3) a commitment to maintain the existing monitoring network; (4) verification of continued attainment; and (5) a contingency plan to prevent or correct future violations. As is discussed more fully below, EPA proposes to find that the New York maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the New York SIP.

2. Analysis of the Maintenance Plan

The maintenance demonstration must demonstrate effective safeguards of the NAAQS for at least 10 years following the redesignation showing that future PM_{2.5} and precursor emissions will not exceed the level of the attainment year.

States are required to submit the following inventory elements to satisfy the redesignation/maintenance plan inventory requirements:

Maintenance Plan Attainment Inventory. Maintenance plan provisions include a comprehensive, accurate, and current emissions inventory from all point, area, nonroad and onroad mobile sources for the PM_{2.5} nonattainment area. States are required to develop an attainment inventory to identify the level of emissions in the area that is sufficient to attain the NAAQS. This inventory should include the emissions during the time period associated with the monitoring data showing attainment.

Maintenance Plan Interim Year Inventory. At a minimum, emissions should be projected to a midpoint year between the attainment year and the endpoint/10-year inventory. This inventory provides a summary of controlled emissions for point, area, nonroad and onroad mobile sources for the PM_{2.5} nonattainment area for the interim year inventory.

Maintenance Plan Projected Final Year Inventory. Emissions should be projected from the attainment year to at least 10 years into the future. This inventory provides a summary of controlled emissions for point, area, nonroad and onroad mobile sources at the endpoint/10-year

period.

For the NYNAA, 2007 emissions were projected to 2017 and 2025. New York must demonstrate, with the control programs identified in this SIP, that total 2017 or 2025 projected emissions do not exceed the 2007 emission levels.

Below are EPA's review and evaluation of the maintenance demonstration for the two areas. Additional detail is provided in the TSD.

(a) Attainment Emissions Inventory

Selection of 2007 Base Year as the Maintenance Plan Attainment Year Inventory

An attainment inventory is comprised of the emissions during the time period associated with the monitoring data showing attainment. New York selected 2007 as the attainment inventory year for the NYNAA for the 1997 annual PM_{2.5} and 2006 24-hour PM_{2.5} standards.

For the 1997 PM_{2.5} annual standard, the NYNAA had monitored attainment based on air monitoring data for 2007-2009. For the 2006 24-hour PM_{2.5} standard, the NYNAA had monitored attainment for 2007-2009, and 2008-2010. EPA proposes to concur that the 2007 base year emissions inventory is appropriate as the attainment year inventory for the PM_{2.5} redesignation maintenance plan.

Criteria for Approval of the Maintenance Plan Attainment Year Inventory

There are general and specific components of an acceptable emission inventory. In general, the State must submit a revision to its SIP and the emission inventory must meet the minimum requirements for reporting by source category.

For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. Evidence that the inventory was quality assured by the state and its implementation documented.
2. The point source inventory must be complete.
3. Point source emissions must have been prepared or calculated according to the current EPA guidance.
4. The area source inventory must be complete.
5. The area source emissions must have been prepared or calculated according to the current EPA guidance.
6. Non-road mobile emissions were prepared according to current EPA guidance for all of the source categories.
7. The method (e.g., HPMS or a network transportation planning model) used to develop vehicle miles traveled (VMT) estimates must follow EPA guidance. The VMT development methods must be adequately described and documented in the inventory report.
8. The US EPA's Motor Vehicle Emissions Simulator (MOVES) model must be correctly used

to produce emission factors for each of the vehicle classes.

EPA's Evaluation of the Maintenance Plan Attainment Year Inventory

Quality Assurance Plan Implementation

The Quality Assurance (QA) plan was implemented for all portions of the inventory. QA checks were performed relative to data collection and analysis to avoid the double counting of emissions from point, area and mobile sources. QA/QC checks were conducted to ensure accuracy of units, unit conversions, transposition of figures, and calculations.

Point and Area Source Inventories

New York's inventory includes major point sources for each pollutant in tons per year (tpy). The inventory report describes how point and area source activity levels and their associated parameters were developed, and how the data were used to calculate emission estimates. The inventory lists the source categories that are included in (and excluded from) the area source inventory. The report provides referenced documents for activity level and emission factors used. Information on how control efficiencies were derived (with the associated sample calculations) is also provided. Point and area source summary information on detailed county and/or nonattainment area levels, are included in the inventory. Where applicable, annual emissions are provided for PM_{2.5}, PM₁₀, NO_x, SO₂, VOC and NH₃ for PM_{2.5} nonattainment areas.

The primary sources of anthropogenic ammonia emissions are two agricultural operations, livestock and fertilizer. Ammonia emissions from livestock and fertilizer were prepared by the EPA using the Carnegie Mellon University (CMU) Ammonia Model, Version 3.6. The model

runs are based on 2007 activity levels. Ammonia emissions for industrial refrigeration, composting, and publicly owned treatment works were prepared by the EPA.

Nonroad Mobile Source Inventory

For the NYNAA, the predominant non-road mobile source categories (i.e., agricultural equipment, construction equipment, industrial equipment, airport service equipment, light commercial equipment, lawn and garden equipment, etc.) were developed by using version 2008a of EPA's Nonroad Emissions Equipment Model released by EPA's Office of Transportation and Air Quality (OTAQ). Nonroad mobile source emissions are presented on a source category, county and/or nonattainment area basis. Where applicable, annual emissions are provided for PM_{2.5}, PM₁₀, NO_x, SO₂, VOC and NH₃ for the PM_{2.5} nonattainment areas.

Aircraft, Locomotive and Commercial Marine Vessel Inventories

Where applicable, aircraft, locomotive, and commercial marine vessel emissions on a county basis are provided for PM_{2.5}, PM₁₀, NO_x, SO₂, VOC and NH₃. Activity level and emissions data for each source category is provided. Aircraft, locomotive and commercial marine vessel source emissions are presented on a source category, county and/or nonattainment area basis. Where applicable, annual emissions are provided for PM_{2.5}, PM₁₀, NO_x, SO₂, VOC and NH₃ for PM_{2.5} nonattainment areas.

Onroad Mobile Source Inventory

For the onroad mobile source category, the primary indicator and tool for developing on-road

mobile growth and expected emissions are vehicle miles traveled (VMT) and EPA's MOVES model. The 2007 pollutant emission factors were generated by MOVES (with the associated controlled measures applied, where appropriate) and applied to the monthly VMT projections provided by the State. Monthly emissions were then combined to develop annual emission estimates.

MOVES model was used to generate emission factors for VOC, NH₃, PM_{2.5}, PM₁₀, NO_x and SO₂ on-road vehicle emission estimates. The report also explains how MOVES emission factors are used, in conjunction with VMT data, to estimate mobile source emissions for the inventoried areas. It provides the sources for the key inputs into the MOVES model. Key assumptions are also included. The methods used to determine on-road emission estimates are explained in the report. VOC, NH₃, PM_{2.5}, PM₁₀, NO_x and SO₂ annual combined on-road mobile emissions by county are provided. Where applicable, annual emissions are provided for VOC, NH₃, PM_{2.5}, PM₁₀, NO_x and SO₂ for all areas. The breakdown of annual emissions by highway vehicle classifications is included in the inventory.

Table 5 below shows the 2007 base year PM_{2.5}, PM₁₀, NO_x, SO₂, VOC and NH₃ annual emission inventories for the NYNAA.

Table 5 - 2007 NYNAA PM_{2.5} Base Year Inventory (in Tons/Year)

Source Sector	VOC	NO _x	PM ₁₀	PM _{2.5}	SO ₂	NH ₃
Point	3,707.01	38,195.94	3,206.28	124,750.31	43,886.32	882.89
Nonpoint	101,481.89	41,899.74	48,054.84	11,621.00	29,513.22	1,960.83
Nonroad	46,026.72	59,512.46	4,170.45	3,899.30	6,052.88	1.96

On-road	71,379.46	149,501.91	9,723.36	6,835.30	982.77	3,484.40
Road Dust	N/A	N/A	3,483.59	1,174.60	N/A	N/A
Total	222,595.08	289,110.05	68,638.51	148,280.52	80,435.19	6,610.08

EPA is proposing to approve the 2007 PM_{2.5} base year inventory for PM_{2.5}, PM₁₀, NO_x, SO₂, VOC and NH₃ for the NYNAA. The Maintenance Plan Attainment Year/Base Year 2007 emissions inventory is comprehensive, accurate, and current for all sources of relevant pollutants in the nonattainment area. In all cases the 2007 attainment/base year inventory was done in accordance with EPA guidance. The technical support document provides additional information regarding the review conducted by EPA for the 2007 PM_{2.5} base year inventory. EPA proposes that by approving the 2007 base year inventory for PM_{2.5}, PM₁₀, NO_x, SO₂, VOC and NH₃ for the NYNAA, will also serve to establish a PM₁₀ emissions inventory specifically for New York County, which satisfies an existing SIP planning requirement for the PM₁₀ New York County nonattainment area. See 78 FR 72032, December 2, 2013.

(b) 2017 Interim and 2025 End Year Projection Inventories

Criteria for Approval of the 2017 Interim and 2025 Projection End Year Inventories

There are general and specific components for acceptable 2017 Maintenance Plan Interim and 2025 End Year Projection Inventories. In general, the State must submit a revision to its SIP and the aforementioned components must meet certain minimum requirements for reporting by

source category.

For the projection inventories to be acceptable they must pass the following acceptance criteria¹²:

1. Were the 2017 and 2025 projection inventories developed in accordance with the procedures outlined EPA's latest guidance?
2. Were the Plans developed in accordance with EPA's latest guidance for Growth Factors, Projections, and Control Strategies for Reasonable Progress Goal Plans?

EPA's Evaluation of the Maintenance Plan 2017 Interim and 2025 End Year Projection

Inventories

A projection of 2007 PM_{2.5} and the associated PM_{2.5} precursors emissions to 2017 and 2025 is required to determine the emission reductions needed for the inventory maintenance plan. The 2017 and 2025 projection year emission inventories are calculated by multiplying the 2007 base year inventory by factors which estimate growth from 2007 to 2017 and 2025. A specific growth factor for each source type in the inventory is required since sources typically grow at different rates.

Major Point Sources

Electric Generating Units (EGU) and Non-Electric Generating Units (Non-EGUs)

For the major point source category, the projected emissions inventories were first calculated by estimating growth in each source category. As appropriate, the 2007 emissions inventory was used as the base for applying factors to account for inventory growth. The point source

¹² Emission Inventory Improvement Program guidance document titled Volume X, Emission Projections, dated December 1999

inventory was grown from the 2007 inventory to 2017 and 2025 for each facility using growth factors utilized in US Department of Energy's (USDOE) Annual Energy Outlook (AEO) projections for 2011 Electric Region and Fuel Source for EGUs and AEO 2010, and State supplied employment data.

Area Sources

For the area source category, New York projected emissions from 2007 to 2017 and 2025 using growth factors generated from USDOE AEO 2010, state supplied population, employment data and vehicle miles travelled (for road dust categories) where appropriate.

Non-Road Mobile Sources

Nonroad Vehicle Equipment Emissions

Non-road vehicle equipment emissions were projected from 2007 to 2017 and 2025 using the EPA's NONROAD 2008a model. This model was used to calculate past and future emission inventories for all nonroad equipment categories except commercial marine vessels, locomotives and aircrafts. Emissions were determined on a monthly basis and combined to provide annual emission estimates.

Aircrafts, Locomotives and Commercial Marine Vessels (CMV)

Aircraft emissions were projected from 2007 to 2017 and 2025 based on landing and takeoff growth factors from the Federal Aviation Administration Terminal Area Forecast System for 2009-2030.

Locomotives emissions were projected from 2007 to 2017 and 2025 based on combined growth

and control factors from EPA's RIA in May 2008 for control of locomotive engines and USDOE's 2006 Annual Energy Outlook report.

CMV emissions were projected to 2017 and 2025 using EPA's regulatory impact assessment (RIA) May 2008 RIA report, for category 1 and 2 vessels and EPA's 2009 RIA report for category 3 vessels based on combined growth and control factors.

Onroad Mobile Sources

For the onroad mobile source category, the primary indicator and tool for developing on-road mobile growth and expected emissions are VMT and US EPA's mobile emissions model MOVES2010a. Projection years 2017 and 2025 pollutant emission factors were generated by MOVES2010a (with the associated controlled measures applied, where appropriate) and applied to the monthly VMT projections provided by the State. Monthly emissions were then combined to develop annual emission estimates.

Tables 6A-6C show the 2007 base year inventory and 2017 and 2025 projection emission inventories controlled after 2007 using the aforementioned growth indicators/methodologies for the NYNAA.

Table 6A: 2007 Emission Totals by Source Sector (tpy) for the NYNAA

Source Sector	VOC	NO_x	PM₁₀	PM_{2.5}	SO₂	NH₃
Point	3,707.01	38,195.94	3,206.28	124,750.31	43,886.32	882.89
Nonpoint	101,481.89	41,899.74	48,054.84	11,621.00	29,513.22	1,960.83
Nonroad	46,026.72	59,512.46	4,170.45	3,899.30	6,052.88	1.96

On-road	71,379.46	149,501.91	9,723.36	6,835.30	982.77	3,484.40
Road Dust	N/A	N/A	3,483.59	1,174.60	N/A	N/A
Total	222,595.08	289,110.05	68,638.51	148,280.52	80,435.19	6,610.08

Table 6B: 2017 Emission Totals by Source Sector (tpy) for the NYNAA

Source Sector	VOC	NO _x	PM ₁₀	PM _{2.5}	SO ₂	NH ₃
Point	4,131.72	37,066.75	3,193.99	124,290.57	43,484.29	867.60
Nonpoint	93,790.95	36,640.38	34,306.76	9,403.95	4,412.25	1,915
Nonroad	26,408.16	45,197.21	3,040.77	2,809.06	4,212.42	1.12
On-road	33,083.83	68,362.66	7,171.83	3,897.71	939.20	2,340.95
Road Dust	N/A	N/A	2,959.46	954.01	N/A	
Tappan Zee Project	N/A	457.00	N/A	N/A	N/A	
Total	157,414.67	187,724.00	50,672.82	141,355.28	53,048.17	5,124.68

Table 6C: 2025 Emission Totals by Source Sector (tpy) for the NYNAA

Source Sector	VOC	NO _x	PM ₁₀	PM _{2.5}	SO ₂	NH ₃
Point	4,153.64	37,645.59	3,201.53	124,294.66	43,596.39	872.33
Nonpoint	94,698.56	35,467.73	38,066.67	10,126.70	4,389.48	1,924.66
Nonroad	24,737.31	42,773.21	2,519.12	2,290.95	4,599.34	1.05
On-road	26,911.17	51,260.81	6,952.22	3,291.09	935.40	2,443.53
Road Dust	N/A	N/A	3,184.31	960.05	N/A	
Total	150,500.68	167,147.34	53,923.85	140,963.45	53,520.61	5,241.57

The permanent and enforceable control measures that are relied on to provide continued attainment of (“maintenance”) of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS are listed as maintenance plan measures in Tables 3 and 4. New York has already implemented, or adopted rules with future implementation dates, for these measures. Additional information regarding the control measures can be found in the TSD.

EPA is proposing to approve the 2017 interim and 2025 PM_{2.5} projections for the NYNAA. In all cases the 2017 and 2025 projection year inventories were performed in accordance with EPA guidance. For further information concerning EPA's evaluation and analysis of the emission inventories, see the TSD available in the docket.

Tables 6A-6C above shows the inventories for the 2007 attainment year, the 2017 interim year, and the 2025 endpoint year for the NYNAA. Tables 6A-6C shows that when comparing the 2007 inventory to the 2017 and 2025 projected emission inventories the NYNAA is projected to reduce PM_{2.5} precursor emissions substantially. Thus, the 2017 and 2025 projected emissions inventories show that the NYNAA will continue to maintain the 1997 annual and 2006 24-hour PM_{2.5} NAAQS during the 10 year maintenance period.

Maintenance Demonstration Thru 2025

As noted in Section VII.E.1, CAA section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area “for at least 10 years after the redesignation.” EPA has interpreted this as a showing of maintenance “for a period of 10 years following redesignation.” *See* Calcagni Memorandum. Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. *See* Calcagni Memorandum.

As discussed in detail above, the State's maintenance plan submission expressly documents that the NYNAA emissions inventories will remain below the attainment year inventories through at least 2025. In addition, for the reasons set forth below, EPA proposes to determine that the State's submission further demonstrates that the NYNAA will continue to maintain the 1997 annual and 2006 24-hour PM_{2.5} NAAQS at least through 2025:

- For the NYNAA, emissions inventory levels for all PM_{2.5} precursors in 2025 are well below the attainment year inventory levels (*see* Table 6C). EPA proposes that it is highly improbable that sudden increases would occur that could exceed the attainment year inventory levels in 2025.
- Air quality concentrations for PM_{2.5} are below the NAAQS by 3 µg/m³ or more, indicating a margin of safety in the event of any emissions increase. As shown in Table 1, for the 1997 annual NAAQS of 15 µg/m³, the design value for 2010-2012 for the NY-NJ-CT PM_{2.5} nonattainment area value was 11.8 µg /m³. As shown in Table 2, for the 2006 PM_{2.5} NAAQS of 35 µg /m³, the design value for 2010-2012 for the NY-NJ-CT PM_{2.5} nonattainment area was 26 µg /m³.
- Air quality concentrations showed a significant downward trend over time for the NY-NJ-CT PM_{2.5} nonattainment area for both the 1997 and 2006 PM_{2.5} NAAQS. See Figures 7 and 8 of the New York redesignation request, which is available in the docket.
- Additional emissions reductions will occur through EPA's Mercury and Air Toxics Standards (MATS)¹³. See the TSD for more information regarding MATS, including

¹³ 77 FR 9304 (February 16, 2012)

expected emission reductions.

(d) Monitoring Network

New York currently operates ten Federal reference PM_{2.5} monitors in the NYNAA. In its June 27, 2013 Air Monitoring Network Plan submittal, New York has committed to continued operation of the PM_{2.5} air monitoring network, which meets the requirements of 40 CFR part 58, to verify continue attainment.

New York is required to perform and submit to EPA an assessment of the air monitoring network every 5 years and to review the adequacy of its air monitoring network plan annually through the air monitoring network plan process. Any changes (aside from emergency changes) to the monitoring network, including replacing or moving monitor(s) to new locations, as necessary, would be made through this process. This review process undergoes a public notice period, and is subject to approval by the EPA.

EPA proposes to conclude that the State of New York has met the requirement for continuing to operate an appropriate air monitoring network.

(e) Verification of Continued Attainment

Continued attainment of the PM_{2.5} NAAQS in the state depends, in part, on the state's efforts towards tracking indicators of continued attainment during the maintenance period. New York's plan for verifying continued attainment of the 1997 and 2006 PM_{2.5} standards consists of

continued operation of New York's PM_{2.5} air monitoring network in accordance with the requirements of 40 CFR part 58. New York will also verify continued attainment by determining whether emission levels from New York's emission inventory, which is developed every three years, are adequate.

EPA proposes to approve New York's plans for verifying continued attainment of the PM_{2.5} NAAQS.

(f) Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency provisions as EPA deems necessary to ensure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by 175A of the CAA, New York has included contingency provisions in the maintenance plan to address possible future PM_{2.5} air quality problems. However, instead of providing a specific schedule and procedure for the adoption and implementation of contingency

measures, New York has identified the list of measures that are currently being pursued by the State, which will be adopted once the New York's rulemaking process has been concluded. New York expects these rules to be adopted within the next few years. These measures include the following:

1. New NO_x and PM control limits on distributed generation sources that are not already subject to state or federal limits (6 NYCRR Part 222- *Distributed Generation*)
2. Additional VOC emission reductions from gasoline dispensing facilities and gasoline transport vehicles (Revisions to 6 NYCRR Part 230- *Gasoline Dispensing Sites and Transport Vehicles*)

New York has also identified two recently adopted rules as contingency measures: Revisions to 6 NYCRR Part 225- *Fuel Composition and Use* (adopted April 5, 2013)¹⁴, and Revisions to 6 NYCRR Part 228- *Surface Coating Processes, Commercial and Industrial Adhesives, Sealants, and Primers* (adopted June 5, 2013)¹⁵. Although New York included these measures in the list of control measures that the State was relying on to demonstrate maintenance (see Section VI.D. for the list of identified maintenance control measures), and while EPA supports the adoption and implementation of these rules to reduce PM_{2.5} emissions, EPA is proposing that these two measures do not qualify as contingency measures since they have already been adopted and used for maintenance. Regardless, EPA notes that PM_{2.5} levels are sufficiently below the NAAQS indicating a sufficient margin of safety in the event of emissions increase. 2010-2012 design values are below the NAAQS by more than 3 µg/m³ for both the 1997 annual and 2006 24-hour

¹⁴ EPA is acting on this rule, which was submitted as a SIP revision on June 12, 2013, in a separate action

¹⁵ EPA proposed approval on November 20, 2013 (78 FR 69625)

PM_{2.5} NAAQS. Tables 1 and 2 of this proposal show the design values for the NY-NJ-CT PM_{2.5} nonattainment area. EPA proposes that it is unlikely that New York will violate the PM_{2.5} NAAQS, as design values in all counties in the NY-NJ-CT nonattainment area are well below the NAAQS, and continue to decrease.

New York has affirmed that all control measures in the maintenance plan have been implemented, or adopted with future implementation dates. New York has also noted in their submittal that the control measures that have led to expeditious attainment of the annual and 24-hour PM_{2.5} NAAQS are SIP implemented measures that cannot be repealed or relaxed without equivalent reductions from other sources(s) (e.g. CAA section 110 anti-backsliding provisions).

Air quality modeling conducted during the CSAPR rulemaking process, as mentioned previously in Section II. B., demonstrated that the counties in the NY-NJ-CT nonattainment area will have PM_{2.5} levels below the NAAQS in 2014, without taking into account emission reductions from CAIR or CSAPR. The highest PM_{2.5} design values, as determined from the CSAPR modeling, for sites in the NYNAA in 2014 was 13.89 µg/m³ for the 1997 annual NAAQS, and 32.0 ug/m³ for the 24-hour 2006 NAAQS. The “modeled differential” between the modeled design values and the PM_{2.5} NAAQS indicates that there are excess emission reductions available for contingency based on EPA CSAPR modeling.

EPA proposes to find that New York’s maintenance plan includes appropriate contingency measures to promptly correct any violation of the NAAQS that occurs after redesignation.

Maintenance Plan Conclusion

For all of the reasons discussed above, EPA is proposing to approve New York's 1997 annual and 2006 24-hour PM_{2.5} maintenance plan for the NYNAA as meeting the requirements of section 175A of the CAA.

VII. What is EPA's analysis of New York's proposed NO_x and PM_{2.5} motor vehicle emission budgets?

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must "conform" to (i.e., be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and attainment demonstrations) and maintenance plans create motor vehicle emissions budgets

(MVEBs or budgets) for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, an MVEB must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

New York has developed MVEBs for the NYNAA. The budgets are being established for both the 1997 annual and 2006 24-hour $PM_{2.5}$ standards. New York determined that budgets based on annual emissions of direct $PM_{2.5}$ and NO_x , a precursor, are appropriate for the 2006 24-hour standard because exceedences of the standard were not isolated to one particular season; therefore, the budgets established by this maintenance plan will be used by transportation agencies to meet conformity requirements for both the annual and daily standards.

New York developed these MVEBs, as required, for the last year of its maintenance plan, 2025, and two additional years, 2009 and 2017, for the purpose of establishing budgets for the near-term based on EPA's MOVES model. Previously established and approved MVEBs had been based on MOBILE6.2.

The 2009 MVEBs were developed without an accompanying full emissions inventory. EPA

proposes that this approach is approvable and is consistent with attainment and maintenance of both the 1997 annual and 2006 24-hour PM_{2.5} standards because of our earlier determinations that the New York-N.J.-New Jersey-Long Island, NY-NJ-CT nonattainment area had attained the standards based on monitored air quality that included the year 2009 (see Section II.A.).

The MVEBs for the NYNAA are defined in Table 7 below.

Table 7- PM_{2.5} and NO_x MVEBs for both the 1997 annual and 2006 daily PM_{2.5} NAAQS (tons per year)

New York Metropolitan Transportation Council & Orange County Transportation Council	Direct PM_{2.5}	NO_x
2009 Motor Vehicle Emissions Budget	5,516.75	106,020.09
2017 Motor Vehicle Emissions Budget	3,897.71	68,362.66
2025 Motor Vehicle Emissions Budget	3,291.09	51,260.81

EPA is proposing to approve the 2009, 2017 and 2025 MVEBs for NO_x and PM_{2.5} for the NYNAA because EPA has determined that the areas will maintain both the 1997 annual and 2006 24-hour PM_{2.5} NAAQS with on-road vehicle emissions capped at the levels set by the budgets. EPA's review thus far indicates that the budgets meet the adequacy criteria set forth by 40 CFR 93.118(e)(4)(i) through (iv), as follows:

- i. The SIP revision was submitted to EPA by the Commissioner of the New York State Department of Environmental Conservation, who is the Governor's designee.
- ii. New York State conducted an interagency consultation process involving EPA and USDOT, the New York State Department of Transportation and affected MPOs. All comments and concerns were addressed prior to the final submittal.

- iii. The motor vehicle emissions budgets were clearly identified and quantified and are presented here in Table 7.
- iv. The 2009, 2017 and 2025 motor vehicle emissions budgets are less than the on-road mobile source inventory for 2007 that was shown to be consistent with attainment of the standards. The applicable state implementation plan demonstrates that the 2017 and 2025 budgets are consistent with maintenance when considered with all other sources for each respective year. The 2009 budgets were developed with all the information for the year 2009, including on-road activity in 2009. Because New York demonstrated attainment in this year to the applicable air quality standards based on monitoring data, the 2009 budgets are therefore consistent with maintenance of the respective standards.
- v. The motor vehicle emissions budgets were developed from the on-road mobile source inventories, including all applicable state and Federal control measures. Inputs related to inspection and maintenance and fuels are consistent with New York State's Federally-approved control programs.

The submitted maintenance plan establishes new 2009, 2017 and 2025 budgets to ensure continued maintenance of the standards; therefore there were no revisions made to previously submitted control strategy implementation plans or maintenance plans.

New York State did not provide emission budgets for SO₂, VOC, and ammonia because it concluded, consistent with the presumptions regarding these precursors in the conformity rule at 40 CFR 93.102(b)(2)(v), which predated and was not disturbed by the litigation on the PM_{2.5}

implementation rule, that emissions of these precursors from motor vehicles are not significant contributors to the area's PM_{2.5} air quality problem.

EPA issued conformity regulations to implement the 1997 PM_{2.5} NAAQS in July 2004 and May 2005 (69 FR 40004, July 1, 2004 and 70 FR 24280, May 6, 2005, respectively). Those actions were not part of the final rule remanded, on January 4, 2013, to EPA by the Court of Appeals for the District of Columbia in *NRDC v. EPA*, No. 08-1250, in which the Court remanded to EPA the implementation rule for the PM_{2.5} NAAQS because it concluded that EPA must implement that NAAQS pursuant to the PM-specific implementation provisions of subpart 4 of Part D of Title I of the CAA, rather than solely under the general provisions of subpart 1. That decision does not affect EPA's proposed approval of these MVEBs.

First, as noted above, EPA's conformity rule implementing the 1997 PM_{2.5} NAAQS was a separate action from the overall PM_{2.5} implementation rule addressed by the Court and was not considered or disturbed by the decision. Therefore, the conformity regulations were not at issue in *NRDC v. EPA*.¹⁶ In addition, as discussed in Section II.A, the New York-N.J.-New Jersey-Long Island, NY-NJ-CT nonattainment area is attaining the 1997 annual and 2006 24-hour PM_{2.5} standards with 2010-2012 design values of 11.8 µg/m³ and 26 µg /m³, respectively, which is well below the annual PM_{2.5} NAAQS of 15 µg/m³ and 24-hour NAAQS of 35 µg /m³. The modeling analysis conducted for the RIA for the 2012 PM NAAQS indicates that the design value for this

¹⁶ The 2004 rulemaking addressed most of the transportation conformity requirements that apply in PM_{2.5} nonattainment and maintenance areas. The 2005 conformity rule included provisions addressing treatment of PM_{2.5} precursors in MVEBs. *See* 40 CFR 93.102(b)(2). While none of these provisions were challenged in the *NRDC* case, EPA also notes that the Court declined to address challenges to EPA's presumptions regarding PM_{2.5} precursors in the PM_{2.5} implementation rule. *NRDC v. EPA*, at 27, n. 10.

area is expected to continue to decline through 2020. Further, the State's maintenance plan shows continued maintenance through 2025 by demonstrating that NO_x and direct PM_{2.5} emissions continue to decrease through the maintenance period. For VOC and ammonia, RIA inventories for 2007 and 2020 show that both on-road and total emissions for these pollutants are expected to decrease, supporting the state's conclusion, consistent with the presumptions regarding these precursors in the conformity rule, that emissions of these precursors from motor vehicles are not significant contributors to the area's PM_{2.5} air quality problem and the MVEBs for these precursors are unnecessary. With regard to SO₂, the 2005 final conformity rule (70 FR 24280) based its presumption concerning on-road SO₂ motor vehicle emissions budgets on emissions inventories that show that SO₂ emissions from on-road sources constitute a "de minimis" portion of total SO₂ emissions. As shown elsewhere in this proposal, on-road emissions in 2025 are less than 2% of total SO₂ emissions in the area.

EPA is proposing to approve the 2009, 2017 and 2025 direct PM_{2.5} and NO_x motor vehicle emissions budgets for the NYNAA for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. We are proposing approval based on our review that shows that the budgets meet the adequacy criteria found in the transportation conformity rule (40 CFR 93.118(e)(4)) and our thorough review of the maintenance plan that shows that the plan will provide for maintenance of both PM_{2.5} NAAQS through 2025.

VIII. What is the status of EPA's adequacy determination for the proposed NO_x and PM_{2.5} motor vehicle emission budgets for 2009, 2017 and 2025 for New York?

When reviewing submitted “control strategy” SIPs or maintenance plans containing MVEBs, EPA may affirmatively find the MVEB contained therein adequate for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA’s substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4) , and our review of New York’s submission in the context of these criteria was presented in Section VII. The process for determining adequacy consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA’s adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA’s May 14, 1999, guidance, “Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.” EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the “New 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,” on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule entitled, “Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,” 68 FR 38974, 38984

(June 30, 2003).

As discussed earlier, New York's maintenance plan submission includes NO_x and PM_{2.5} MVEBs for the NYNAA for 2009, 2017 and 2025. EPA reviewed the NO_x and PM_{2.5} MVEBs through the adequacy process. The New York SIP submission, including the NO_x and PM_{2.5} MVEBs, was open for public comment on EPA's adequacy Web site on July 15, 2013, found at: <http://www.epa.gov/otaq/stateresources/transconf/currrips.htm>. The public comment period closed on August 14, 2013. EPA did not receive any comments on the adequacy of the MVEBs, nor did EPA receive any requests for the SIP submittal.

A letter was sent to New York State on August 19, 2013, stating that the 2009, 2017 and 2025 MVEB's in New York's SIP for the New York PM_{2.5} nonattainment area were adequate because they are consistent with the required maintenance demonstration. In the letter we noted that there are existing approved and adequate budgets for 2009, but that the 2009 budgets contained in the submitted maintenance plan will be the most recent budget in place to satisfy the latest Clean Air Act requirement and therefore will be the applicable 2009 budget to be used in future transportation conformity determinations for analysis years prior to 2017.

EPA then published in the Federal Register its determination on the adequacy of the PM_{2.5} and NO_x 2009, 2017 and 2025 MVEBs for transportation conformity purposes. (78 FR 54177, September 3, 2013). These budgets became effective on September 18, 2013, after which they were required to be used for all future transportation conformity determinations.

IX. What action is EPA proposing to take?

EPA is proposing to approve New York's request for redesignating the NYNAA for the 1997 and 2006 PM_{2.5} NAAQS to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. EPA has evaluated New York's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the monitoring data demonstrate that the NYNAA has attained the 1997 annual and 2006 24-hour PM_{2.5} NAAQS and will continue to attain the standard. Final approval of this redesignation request would change the designation of the NYNAA from nonattainment to attainment for the 1997 PM_{2.5} annual and the 2006 PM_{2.5} 24-hour NAAQS. EPA is also proposing to approve the maintenance plan for the NYNAA as a revision to the New York SIP. EPA is also proposing to approve the 2007 NH₃, VOC, NO_x, PM₁₀, direct PM_{2.5}, and SO₂ emission inventories as meeting the comprehensive emissions inventory requirements of section 172(c)(3) of CAA. Additionally, EPA is proposing to approve the 2009, 2017, and 2025 motor vehicle emissions budgets for PM_{2.5} and NO_x. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

X. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices,

provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: January 16, 2014

Judith A. Enck
Regional Administrator,
Region 2.

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